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December 16, 2021

Via ECF

The Honorable Analisa Torres
United States District Court for the
Southern District of New York
500 Pearl St.
New York, NY 10007

Re: *Knight First Amendment Inst. at Columbia Univ. v.*
Centers for Disease Control & Prevention, Case No.
20 Civ. 2761 (AT)

Dear Judge Torres,

Plaintiff the Knight First Amendment Institute at Columbia University writes to bring to the Court's attention the Second Circuit's recent decision in *Natural Resources Defense Council ("NRDC") v. U.S. Environmental Protection Agency*, No. 20-422 (2d Cir. Nov. 29, 2021) (attached as Exhibit A). In *NRDC*, the Second Circuit clarified the relationship between the deliberative process privilege and messaging records, holding that "[a]n agency exercises 'policy-oriented judgment' when deciding how to communicate its policies, and the deliberative process privilege therefore protects otherwise deliberative agency records that relate to and precede the agency's final communications decision." Ex. A at 3; *see id.* at 11–24. It then reversed the district court's disclosure order as to eleven of the messaging records, *id.* at 21, and vacated the disclosure order as to the remaining seven messaging records, remanding to give the agency the opportunity to provide additional information, *id.* at 24.

The Second Circuit's decision in *NRDC* is relevant to the agency's withholding of portions of Document 12, a messaging record, under the deliberative process privilege. *See* Pl.'s Br. 22–

23, ECF No. 39 (citing the district court decision in *NRDC*, No. 17 Civ. 5928 (JMF), 2019 WL 4142725 (Aug. 30, 2019)); Pl.'s Reply Br. 13–14, ECF No. 44 (same); *Knight First Amendment Inst. at Columbia Univ. v. CDC*, No. 20 Civ. 2761 (AT), 2021 WL 4253299, at *16 (S.D.N.Y. Sept. 17, 2021), ECF No. 54 (same).

Respectfully,

/s/ Anna Diakun

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